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What Kind of a World Court?

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IN every human government, some form of court is considered an essential. And, as in the early days of history when private warfare was among the chief evils of human existence, so now when warfare among nations is one of the prime foes of human progress, the necessity of settling disputes and procuring justice by peaceful methods makes a court the outstanding need of international life. As a prerequisite to the further co-operation of nations and, indeed, to their continued existence, an international court is an imperative need of our time. Disarmament, for example, must go hand in hand with judicial settlement; for if law is to take the place of war, there must be a court to interpret and apply the law; and if war is to be replaced by judicial settlement, preparations for military settlement must cease.

For three centuries past, seers like Crucé, Penn and Ladd have advocated an international court. During the past century and a half there have been more than two hundred and forty disputes between nations settled by tribunals of arbitration set up by the nations involved in the disputes; and in 1899 the First Hague Conference established the International Court of Arbitration. This court has settled eighteen disputes among the nations, large and small, one of these having been a dispute between France and Germany.

But this so-called court is only a list of jurists (not more than four being appointed by each nation), from which three or five judges may be chosen to constitute a tribunal for arbitrating specific disputes as they arise. As soon as this tribunal hands down its award in any given case, it ceases to exist. Hence the only thing permanent about this Hague Court of Arbitration is its list of judges from which the temporary tribunals may be chosen. The awards handed

down by the tribunals may or may not be regarded as precedents by their successors; and hence they cannot build up that body of precedents which is essential in a genuine and successful judicial institution.

The new International Court of Justice established at the Hague is a permanent body of eleven judges, with its courthouse doors always open to disputant nations, and bearing upon its own records the decisions, facts and arguments in the disputes settled by it. It is thus ready for immediate action when disputes arise; and by its readiness, experience, precedents and able and fearless judges, it can exert a more attractive influence than the other court and its tribunals can, to bring each new dispute before it.

This getting of international disputes before the international court is the crux of international peace. And it is just here that exists the most serious defect of both the Court of Arbitration and the Court of Justice. The Court of Arbitration has never possessed the right of summoning both or all parties to a dispute on the appeal of *one* of the parties; and the kinds of cases agreed upon for admission to the court are very inadequate in number and quality, because of the far-reaching reservations made in the treaty which established it. The treaty which established the Court of Justice provides for a wide range of cases that may be brought before it; and various treaties, like that of Versailles, give it affirmative jurisdiction in matters concerning the interpretation of the treaties; while the League of Nations is empowered to request its advisory opinion on legal questions arising under the Covenant. But except in this limited field this court, like the old one, lacks the power to take jurisdiction over a case unless *all* parties to the dispute give their consent.

When the plan of the Court of Justice was submitted by the committee of jurists to the League of Nations for recommendation to the respective governments, it was equipped with this so-called "compulsory jurisdiction," or right to entertain a case at the request of only one of the parties to it. The League of Nations cut out this salutary provision, and only thirteen of the forty-six nations which have adopted the court have agreed to restore this provision as between themselves. The United States Supreme Court has always possessed this right; and when the United States adopts the Court of Justice it should follow its own great precedent, set an example to the other nations, and give a great impulse to their confidence in judicial settlement, by accepting for itself this "compulsory" provision.

Another promising method of getting cases before the court is by the development of an International Commission of Inquiry, which shall be a permanent body and, after its investigation of the facts in a given dispute, shall be permitted to send to the court for trial all cases which it may deem to be *justiciable,* that is, capable of settlement by law or equity. A constitutional amendment should be adopted by the United States, if necessary, to require the assent of the Senate only to the general treaty establishing the Commission, and not to the *compromis,* or special agreement for sending to the court the specific cases arising under the general treaty.

One strong feature of the Court of Justice, as of the United States Supreme Court (in its dealings with the States), is the fact that it does not rely upon the compulsion of force or the fear of force to procure the fulfillment of its decisions. These it leaves to the mutual promise of the nations, their sense of national honor, and the power of a national and world-wide public opinion in support of a decision accepted by governments in advance and based upon a fair trial in a world court of justice. That they can be thus safely left is proved by reason, by the experience of the United States Supreme Court in settling eighty-seven disputes among our American States, and by the experience of two hundred and forty tribunals of arbitration in settling disputes among nations.

There is always the *possibility,* of course, that nations may reject judicial decisions and appeal to arms; and this possibility is made an imminent and dangerous one by the preparedness of armed forces and methods of warfare. Another possibility, which mounts to a probability and a virtual certainty, is that the maintenance of armaments will make the military method inevitable and prevent an appeal to the judicial method. The success and the continued existence of international courts, as well as of all other international agencies of beneficent activity, depend indubitably upon the utter rejection of armed force, in its use, its threat and its existence, for international purposes.

International law, born in the midst of the terrible Thirty Years' War of the Seventeenth Century, and reared amid the war-torn centuries since, recognizes war and preparations for it as the legal right of sovereign states; and it has devoted most of its efforts to the "humanizing" of war when it occurs. Now that the world has come to realize that war is inevitably and increasingly inhuman and brutal, the new international law will repudiate war as a sovereign right, and

devote its attention exclusively to peaceful settlement as a sovereign duty. This is the first fundamental reform requisite in relations between nations. The Third Hague Conference, composed of popular representatives from all nations, should be summoned both to outlaw war (by agreeing that it is no legitimate exercise of sovereignty, and by rejecting the whole code of "laws" relating to war and neutrality), and to provide for the further codification of the law of peace. The international court, also, will play a useful part in this revolution of international law; for it will serve as the visible, accessible and rational substitute for war, and it will itself develop by its decisions the new code of international law.

Shall the United States adopt the International Court of Justice? Our interests, our history, our fundamental political theory all shout a vehement *aye*. This will not cause us to join the League of Nations. The Court is not based upon the League's Covenant, but upon a separate treaty adopted separately by the nations acting independently of their membership or non-membership in the League. If *all* connection between the Court and the League must be severed, then the salary of its judges and other expenses need not be paid through the League's agency, but by an agency at the Hague analogous to that which has financed for many years the International Postal Union. The judges themselves need not be chosen by the League's Assembly and Council, but by some such agency as the judges of the International Court of Arbitration, who already possess the duty of nominating them.

These details, however, are non-essential, since they involve no question of principle. The real question of principle is, Shall the American people fulfill their manifest destiny in aiding the world to substitute judicial settlement for war, and mutual co-operation for hatred and destruction?

While for the Christian Church the burning question is, Shall the church and all professed Christians follow their Leader in rejecting the military sanction for international courts, councils and all other institutions and processes in international life, and unequivocally and fearlessly rely upon those higher as well as more effective sanctions which are alone consistent with Christianity?